

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. 2:99-cr-00051-GEB-1

Plaintiff,

v.

REVERIANO OLIVERA,

**ORDER DENYING DEFENDANT'S
MOTIONS FOR REDUCTION OF
SENTENCE**

Defendant.

On December 18, 2014, January 5, 2015, and August 21, 2015, Defendant Reveriano Olivera filed, in pro per, motions for "a reduction of his term of imprisonment under 18 U.S.C. § 3582(c)(2)[,]" arguing "the recent amendment to Section 2D1.1 of the United States Sentencing Guidelines[,] . . . Amendment 782¹, . . . qualifies [him] for a reduction." (Def.'s Mot. Reduction Sentence 1, ECF No. 363; see also ECF Nos. 364, 368.)

The government opposes Defendant's motions, rejoining:

[D]efendant does not qualify for a sentence reduction. To be eligible for a sentence reduction under 18 U.S.C. § 3582(c)(2), [D]efendant must show that his sentence was "based on a sentencing range that has subsequently been lowered by the Sentencing Commission" and (2) "such a reduction is consistent with applicable policy statements

¹ "Amendment 782, which revised the Drug Quantity Table in U.S.S.G. § 2D1.1 and reduced by two levels the [base] offense level applicable to many drug offenses, became effective on November 1, 2014. Moreover, the Sentencing Commission voted to make Amendment 782 retroactively applicable to previously-sentenced defendants." United States v. Viengkham, No. 1:11-cr-00052-MCE-4, 2015 WL 273314, at *1 (E.D. Cal. Jan. 21, 2015).

1 issued by the Sentencing Commission." United
2 States v. Wesson, 583 F.3d 728, 730 (9th Cir.
2009) (quoting 18 U.S.C. § 3582(c)(2)).

3

4 According to the Judgment and
5 Commitment Order in this case, the Court
6 found an Offense Level of 42, Criminal
7 History Category I, and resulting guideline
8 range of life in prison. Docket No. 238; J&C
9 Order, at 2. This Offense Level is consistent
10 with the PSR's calculation that the
defendant's Base Offense Level is 38 because
he is responsible for 24.896 kilograms of
methamphetamine (actual). PSR ¶¶ 26-27
(finding total of 24.896 kilograms, of
methamphetamine (actual) attributable to the
defendant).

11

12 Under the current version of § 2D1.1,
13 24.896 kilograms of methamphetamine (actual)
14 still results in an Offense Level of 38.
U.S.S.G. § 2D1.1(c)(1) (setting Base Offense
Level of 38 for offense involving drug
quantity more than 4.5 kilograms of
methamphetamine (actual)). Thus, the
15 [D]efendant's base offense level is
16 unaffected by Amendment 782 and,
consequently, his guideline range of life in
17 prison on Counts 1 and 4 remains the same
today as at it was during his original
sentencing. Similarly, Amendment 782 did not
alter the specific offense characteristic
18 enhancements attributable to this defendant
for his crimes. Specifically, his guideline
range today still would include a 2-level
increase in Offense Level because the crimes
of conviction involved the contamination of a
location from methamphetamine manufacturing
21 and a 4-level increase in Offense Level for
leadership still apply to this defendant. PSR
¶¶ 29, 30-34. Stated another way, under §
1B1.10, the [D]efendant is ineligible for
relief because Amendment 782 did not have the
effect of lowering the [D]efendant's
25 applicable guideline range. Accordingly,
[D]efendant's motions for a sentence
reduction should be denied because he is not
26 eligible for relief.

27

28 (Gov't Opp'n 3:9-4:22, ECF No. 370 (citation omitted).)

1 "As a general matter, courts may not alter a term of
2 imprisonment once it has been imposed." United States v. Leniear,
3 574 F.3d 668, 673 (9th Cir. 2009) (internal quotation marks
4 omitted) (quoting United States v. Hicks, 472 F.3d 1167, 1169 (9th
5 Cir. 2007)).

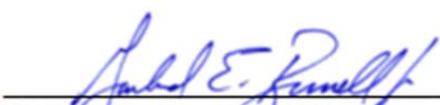
6 However, 18 U.S.C. § 3582(c)(2) creates an
7 exception to this rule by allowing
8 modification of a term of imprisonment if:
9 (1) the sentence is "based on a sentencing
range that has subsequently been lowered by
the Sentencing Commission"; and (2) "such a
reduction is consistent with applicable
policy statements issued by the Sentencing
Commission."

10 Id. (quoting 18 U.S.C. § 3582(c)(2)).

11 The Sentencing Commission policy statement relevant to
12 this case prescribes: "[a] reduction in the defendant's term of
13 imprisonment is not consistent with this policy statement and
14 therefore is not authorized under 18 U.S.C. 3582(c)(2) if . . .
15 [the relevant] amendment . . . does not have the effect of
16 lowering the defendant's applicable guideline range." U.S.S.G. §
17 1B1.10(a)(2).

18 Here, "[Amendment 782] does not result in a different
19 sentencing range, [therefore D]efendant is not eligible for a
20 sentencing reduction pursuant to Section 3582(c)(2)." United
21 States v. Gonzalez, No. 1:94-CR-5011 LJO, 2015 WL 854206, at *1
22 (E.D. Cal. Feb. 26, 2015). Accordingly, Defendant's motions for a
23 sentencing reduction, (ECF Nos. 363, 364, 368), are DENIED.

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25 Dated: September 30, 2015

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GARLAND E. BURRELL, JR.
Senior United States District Judge
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